

DEPARTMENT OF HEALTH SERVICES

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PETE WILSON, Governor



November 7, 1992

TO: All County Welfare Directors
All County Administrative Officers
All County MEDS Coordinators
All County MEDS Security Coordinators

Letter No.: 92-86

SUBJECT: Confidentiality Policies Governing Medi-Cal and MEDS

This is to remind county welfare departments of the necessity to follow the policies of the State Department of Health Services (the Department) governing the confidentiality and accessibility to information obtained from Medi-Cal recipients, Medi-Cal records, and/or the automated Medi-Cal Eligibility Data System (MEDS).

The Department's Medi-Cal and MEDS access policy has been established in accordance with federal and state laws governing confidentiality. This policy applies to any governmental or private entity. There is long-standing and strong public policy, as well as an overwhelming amount of legal authority, upholding confidentiality. These laws are to be strictly construed in favor of protecting personal information about the individual, and the circumstances where disclosure is proper are extremely limited. Based on this policy, online MEDS terminal access with inquiry and/or update capabilities is available only to county welfare departments (CWDs) and their outstationed CWD staff. Confidential information regarding recipients may be released only for purposes related to administration of the program.

The following is a brief summary of the federal and state statutes and regulations governing release of beneficiary information:

State and federal laws and regulations prevent the disclosure of personal information regarding beneficiaries to the county generally. County welfare office employees are allowed access to eligibility data for purposes of administering the Medi-Cal eligibility process as agents of the state. This is a limited disclosure for limited purposes. Nothing in the law or regulations contemplates disclosure of Medi-Cal beneficiary information to the county generally or to the county in its role as provider.

Federal law governing Medicaid requires that medical information on applicants and beneficiaries be kept confidential. (42 U.S.C. section 1396a (a) (7).) The regulations implementing this law deal with the disclosure of information collected and maintained by state Medicaid agencies. (42 C.F.R. sections 431.300 et seq.)

More specifically, 42 C.F.R. section 431.300 requires the Medicaid State Plan for each state to set forth the conditions under which, and individuals to whom, applicant information may be released. California's State plan does not include release of applicant information to agencies, business firms, and other entities desiring to represent applicants in the eligibility process or to undertake collection activities against the Department. Further, 42 C.F.R. section 431.306, requires the prior, informed, written

All County Welfare Directors
All County Administrative Officers
All County MEDS Coordinators
All County MEDS Security Coordinators
Page 2

consent of the applicant/beneficiary before such disclosure can take place. That regulation further states that the non-disclosure policy applies to all requests for information, including those from other government agencies, the courts, and law enforcement officials.

Welfare and Institutions Code section 14100.2 embodies these principles and describes the information to be regarded confidential. This information includes applicant/beneficiary names, addresses, services provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data. (See also 22 C.C.R. sections 50111 and 51009.)

The Medi-Cal Eligibility Manual, section 2-H, titled "Confidentiality of Medi-Cal Case Records," referring to section 14100.2, Welfare and Institutions (W&I) Code, provides in part that:

- "(a) All types of information, whether written or oral, concerning a person, made or kept by any public office or agency in connection with the administration of any provision of this chapter..... shall be confidential, and shall not be open to examination other than for purposes directly connected with administration of the Medi-Cal program.
- "(b) Except as provided in this section and to the extent permitted by federal law or regulation, all information about applicants and recipients as provided for in subdivision (a) to be safeguarded includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.
- "(c) Purposes directly connected with the administration of the Medi-Cal Program....encompass those administrative activities and responsibilities the State Department of Health Services and its agents are required to engage in to ensure effective program operations. Such activities include, but are not limited to: establishing eligibility and methods of reimbursement; determining the amount of medical assistance; providing services for recipients; conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medi-Cal Program; and conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal Program.
- "(f) Requires agents of the state to abide by rules and regulations governing the custody, use and preservation of all records pertaining to administration of the Medi-Cal Program.

All County Welfare Directors
All County Administrative Officers
All County MEDS Coordinators
All County MEDS Security Coordinators
Page 3

"(h) States that "any person who knowingly releases or possesses confidential information concerning persons who have applied for or who have been granted any form of Medi-Cal benefits... for which state or federal funds are made available in violation of this section is guilty of a misdemeanor."

The Medi-Cal Eligibility Manual, section 14-D, titled "Verification of Medi-Cal Eligibility" states in part:

A. Medi-Cal Providers

"... only county welfare departments and their outstationed staff may have access to Medi-Cal Eligibility Data Systems (MEDS) terminals for inquiry and update of information. In addition, counties cannot provide MEDS printouts to any provider, nor proof of eligibility (POE) labels to any provider except for deceased beneficiaries and as described in B below. (Section B covers general acute hospitals and licensed primary care clinics. See your Medi-Cal Manual for more information.)

The Department's current policy does allow providers to contact CWDs for eligibility information necessary to bill the Medi-Cal Program.

Section 14-D, continues:

"When a provider requests beneficiary information, the county should obtain the provider's name, telephone number, and enough information to identify the beneficiary. This information must be sufficient to assure the county that there is no question as to the identity of the beneficiary before it releases any information.

"Typically, providers will request the beneficiary's county ID number and/or verification of eligibility for a specific month to enable them to bill the Medi-Cal program for services rendered.

"If the provider is unable to furnish the beneficiary's birth date or social security number, but is able to provide sufficient information to identify the beneficiary (i.e., beneficiary's name and home address), the county may release the following beneficiary information:

1. County ID number (14 digits).
2. Date of birth.
3. Eligibility status for requested month(s) (e.g., eligible, ineligible, share of cost (SOC) amount, long-term care status).
4. Other health coverage.
5. Restricted status (if applicable).
6. Medicare coverage (if applicable).

All County Welfare Directors
All County Administrative Officers
All County MEDS Coordinators
All County MEDS Security Coordinators
Page 4

"The county is not to release information concerning an ineligible individual other than the fact he/she is not eligible for Medi-Cal for a specific month."

One particular misinterpretation of the Department's policy has occurred where a county in its role as payer or a county hospital seeks to obtain confidential beneficiary information for the purpose of conducting collection activities against the Medi-Cal program (including pursuing eligibility for patients). Recently, there has been an attempt to justify the release of confidential information from the CWD to other branches of county government based on the contention that the collection activity is a part of the "administration of the program." The Department rejects this argument as contrary to law.

The "administration of the program" encompasses those administrative activities and responsibilities that the State is required to engage in to ensure "effective program operations," which includes determination of eligibility by the Department and its agents. Although the county hospital is attempting to establish eligibility for its patients for the benefit of the county, the function of establishing eligibility for purposes of section 14100.2 is by the State and its agents (the CWDs), not by third party creditors, such as county hospitals or other providers (or collection agencies working under contract for such providers). The language of the statute is very limiting in nature.

Summary:

CWDs are responsible for assuring that the confidentiality of beneficiary eligibility information is maintained. CWDs must monitor their procedures for maintaining the confidentiality of eligibility information and remind staff of the confidentiality requirements. Welfare and Institutions Code section 14100.2, subsection (h), provides that a violation of confidentiality is a misdemeanor. CWDs should remind their employees of this provision.

If you have any questions concerning Medi-Cal confidentiality regulations and/or MEDS security policies, please contact Al Brinsfield of my staff at (916) 657-0837.

This All County Letter supersedes ACWDLs Number 88-64, 88-24, and 85-48.

Sincerely,
ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch